



17th Legislative Assembly of the Northwest Territories

Standing Committee on Rules and Procedures

Report on the Review of
the Report of the
Chief Electoral Officer
on the Administration of the
2011 Election

Chair: Mr. Bob Bromley

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March 13, 2013

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Rules and Procedures is pleased to provide its Report on the Review of the Report of the Chief Electoral Officer on the Administration of the 2011 Election and commends it to the House.

A handwritten signature in blue ink, appearing to read "Bob Bromley", with a stylized flourish at the end.

Bob Bromley
Chairperson

STANDING COMMITTEE ON RULES AND PROCEDURES

REPORT ON THE REVIEW OF THE REPORT OF THE CHIEF ELECTORAL OFFICER ON THE ADMINISTRATION OF THE 2011 ELECTION

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STANDING COMMITTEE ON RULES AND PROCEDURES

REPORT ON THE REVIEW OF THE REPORT OF THE CHIEF ELECTORAL OFFICER ON THE ADMINISTRATION OF THE 2011 ELECTION

INTRODUCTION

The Report of the Chief Electoral Officer of the Northwest Territories on the Administration of the 2011 Election was tabled in the Legislative Assembly on June 14, 2012. The Standing Committee on Rules and Procedures is tasked with the responsibility to review the report and make recommendations to the Legislative Assembly.

The Standing Committee wrote to all candidates, official agents and returning officers who participated in the 2011 election, inviting them to appear before the Committee at a public hearing on the Chief Electoral Officer (CEO)'s report, and to provide written submissions to the Committee. The Committee also invited all Members of the Legislative Assembly to a meeting to discuss the CEO's report on December 5, 2012. The Committee's public hearing with the CEO took place on January 23, 2013. At that meeting three witnesses, in addition to the CEO, made presentations to the Committee. One individual also provided a written response to the Committee's letter. The Committee would like to thank the CEO and all those who provided their comments on the report.

CONCERNS AND ISSUES DISCUSSED DURING THE STANDING COMMITTEE'S REVIEW PROCESS

A number of concerns and issues were discussed during the Committee's review process. The Committee wishes to highlight the following matters.

Voters List

The Committee heard a number of concerns about substantial inaccuracies in the voters list. For example, the list not only omits a number of eligible voters, but also includes many people who no longer live at the addresses where they are registered, and most unfortunately, a number of people who are deceased. These inaccuracies impact the electoral process, and also create the appearance that voter turnout is lower than it actually is because the list includes the names of so many people who are not actually eligible voters in the electoral districts where they are registered.

During the public hearing, the CEO recognized the serious problems with the voters list and advised Committee of multiple measures underway to revise it. The Committee was pleased to hear that, as a result of these measures, several thousand changes have already been made. The Committee accepts the CEO's view that a general enumeration is not the most effective way to bring the list up to date, although targeted enumerations may be required for some areas. As candidates are very familiar with the eligible voters in their electoral districts, the Committee suggests that the CEO consider ways to take advantage of this expertise, perhaps shortly following each election, if this can be done without creating any perception of conflict of interest or bias.

Committee members also noted that voters lists were not made available to candidates in a consistent format. In some cases the lists were provided in hard copy, and in other cases they were provided electronically. The Committee recommends that the Office of the CEO should make voters lists available to candidates sooner and in a standard electronic format, such as an Excel spreadsheet, which can be manipulated.

Voter Identification Requirements

The Committee heard concerns that the new voter identification requirements, which mirror the requirements for federal elections, did in some cases discourage qualified voters from voting. The requirements do seem somewhat excessive, particularly in our smaller communities where we all know each other. During the public hearing, the CEO conceded that federal requirements may be stricter than what is needed in the Northwest Territories to protect the electoral process, and offered to research the issue further and return with recommendations for improvements at the Assembly's direction. The Committee agrees with the CEO's proposed approach.

Citizen Engagement

The Committee is not convinced that citizen engagement is as low as the voter turnout numbers reported in some electoral districts suggest. As stated earlier, inaccuracies in the voters list created the appearance of a much larger number of eligible voters than actually existed. Difficulties with voter registration and identification, and limitations on voting opportunities for some voters may also have discouraged some eligible voters from voting. Some of the recommendations for amendments to the Act outlined later in this report will help to address these issues. However, the Committee would be supportive of efforts to promote civic engagement in youth and a lifelong habit of voting through enhanced curriculum content.

Training

The Committee heard of some instances where elections officers seemed uncertain of how to carry out their responsibilities. The Committee was therefore pleased to hear of the CEO's planned initiatives to enhance training of election officers prior to the next election.

Social Media

The use of social media such as Facebook raised some concerns during the recent campaign because it is highly influential, yet does not provide a way to respond to or correct misinformation. Social media is difficult if not impossible to regulate, not least because comments of concern are often posted by candidates' supporters and are beyond candidates' control. The Committee recommends the CEO monitor any developments on the use of social media in election campaigns in other jurisdictions, and consider developing guidelines to assist candidates and their teams.

Re-Used Signage

The Committee heard a number of concerns about the valuation of signs re-used from previous election campaigns. The Committee believes it is unfair to value reused signs at their full cost for the purposes of calculating campaign expenses. Instead, reused signs should be valued using a consistent standard based on accounting principles that reflect depreciated value.

Location of Polling Stations

The Committee heard that some polling stations, particularly in the City of Yellowknife, were not as clearly identified as they could have been, and that some people were unsure of where they should go to vote. While the Committee is aware that this information is available on the CEO's website and elsewhere, more prominent signage identifying the location of polling stations would be helpful.

Government Advertising

The Legislative Assembly already places restrictions on advertising activities by Members during election years. However, there are no similar restrictions on government advertising. Government ads that feature Cabinet Members may be seen as conferring an unfair advantage. During the public hearing, the CEO advised that other jurisdictions have put in place some restrictions on government advertising during election periods. The Committee recommends

that the Government review practices in other jurisdictions and develop appropriate guidelines for election year advertising.

REVIEW OF THE CEO'S RECOMMENDATIONS

The CEO's Report includes 25 recommendations for amendments to the *Elections and Plebiscites Act* (the *Act*) and other changes to improve electoral processes. These recommendations are described thoroughly in the CEO's Report. For the purposes of this report, the CEO's recommendations are described only briefly.

Polling Day

Polling day is currently the first Monday of October. In his report, the CEO suggested that having polling day on a Monday presents challenges for election administration and candidates, and may impede voter turnout. The CEO recommended that polling day be changed to a Saturday, or a day later in the week than Monday, or be declared a holiday.

In the absence of data supporting the argument that voter turnout is lower on Mondays, the Standing Committee is not prepared to support this recommendation at this time. However, the Committee is agreeable to the CEO undertaking further research on this topic and providing the results to the Committee at a later date.

Preliminary List of Electors

Under existing legislation, the preliminary list of electors is only available to voters at the Office of the Returning Officer. Municipal voters lists are made available in more places, which makes it easier for electors to check whether they are registered and to provide any necessary corrections before the final voters list. The CEO recommends that the *Act* be amended to enable the CEO, during an election campaign, to communicate the contents of the list of electors to the public using the best available means. The Standing Committee agrees.

Striking Names from the Preliminary List of Electors

The CEO recommends the *Act* be amended to enable returning officers to strike names from the preliminary list of electors in cases where the returning officer is certain a person is no longer resident in the electoral district. The *Act* would also be amended to require the returning officer to post the names of persons struck from the list and to update it daily during the revision period. The Standing Committee agrees.

Prohibition on Broadcasting

The CEO recommends repealing section 104 of the *Act*, which prohibits broadcasting to promote or oppose a candidate's election on election day and the day before. The Standing Committee disagrees.

The Committee does, however appreciate the difficulties of interpreting the term "broadcasting". The Committee therefore recommends that the CEO undertake further research on possible definitions for "broadcasting" that would make the term clearer, and provide the results of that research to the Committee.

Voting by Special Ballot

The CEO recommends amending the *Act* to change the period for mail-in ballots by enabling an elector to apply to the CEO to vote by special ballot up to two weeks before the issue of the writ for an electoral district continuing until the 10th day before polling day, and to change the *Act* so that the CEO does not provide special ballots until after the close of the nomination period. The Standing Committee agrees.

Advance Poll

The CEO recommends repealing the *Act's* provisions for advance polls, and that the CEO be directed to return to the Assembly with detailed recommendations to establish a new special voting opportunity for communities without a resident returning officer similar to voting in the Office of the Returning Officer. The Standing Committee agrees with directing the CEO to return with detailed recommendations for a new special voting opportunity for communities with fewer than 500 residents, but disagrees with eliminating advance polls in communities with 500 residents or more, as they seem to be working there.

Campaign Finance

The CEO recommends that the Standing Committee propose a set of principles to be reflected in the campaign finance provisions of the *Act* and direct the CEO to return to the Assembly with detailed recommendations to amend Part 9 of the *Act*. The Committee agrees with this recommendation, however, recommends that the CEO undertake further research on other jurisdictions' approaches to campaign finance and provide the results of that research to the Committee in order to assist the Committee in developing a set of proposed principles.

Offences

The CEO recommends that the *Act* be amended to make threatening a candidate and impersonating an election officer an offence. The Standing Committee agrees.

Tariff of Fees Regulations

The CEO recommends that the Legislative Assembly support in principle that the CEO will recommend to the Commissioner a restructured *Tariff of Fees Regulations* to reflect the rebalancing of duties between election officers and to remunerate election officers for the completion of specific assignments. The Standing Committee agrees in principle that the regulations should be amended, but recommends that the CEO provide the draft regulations to the Committee for comment before recommending them to the Commissioner.

Registration of Incarcerated Electors

In order to facilitate voter registration of incarcerated persons, the CEO recommends that the *Act* be amended to require the Deputy Minister of Justice, at the request of the CEO, to provide the names and addresses of inmates who are residents of the Northwest Territories on a date specified and who have or who will have attained the age of 18 years on a date specified. The Standing Committee agrees.

Define ‘Sponsor’

The CEO recommends defining the term “sponsor” in the *Act*, and proposes to work with legislative drafters to define the term “sponsor” as being: the person or organization that pays for, provides, or incurs the cost of the campaign material bearing the identification. The Standing Committee agrees, and further recommends that the CEO be directed to develop a consistent phrase to be used to identify sponsors on campaign material and include that in guidelines for candidates.

Mobile Poll Administration

Currently, only returning officers can conduct mobile polls, which limits capacity to deliver this service. The CEO recommends amending the *Act* to allow all elections officers to conduct mobile polls. The Standing Committee agrees.

Vouching

The CEO recommends that the *Act* be amended so that a person vouching for an elector without sufficient identification need only reside in the same electoral district, rather than in the same polling division. The Standing Committee agrees.

Nomination Papers as Public Records

The CEO recommends that the *Act* be amended to add candidate nomination papers to the list of public records that may be inspected during office hours at the OCEO. The CEO also proposes to convey through guides and other publications that nomination papers are public records and that, during the campaign period, nomination papers may be inspected in the office of the returning officer; further, during the nomination period, the CEO proposes to convey to the public an unofficial list of who has been nominated and how many people have been nominated across the territory. The Standing Committee agrees.

Investigative Powers of CEO

The CEO recommends amending the *Act* to grant the CEO the same enforcement powers as a Board of Inquiry under the *Public Inquiries Act*. While the Standing Committee agrees that the CEO may need broader enforcement powers than currently exist in the *Act*, Members are concerned that the proposed amendment may make those powers too sweeping. The Committee instead recommends that the CEO return to the Committee with recommendations for additional specific enforcement powers and substantiation of the need for those powers.

Deputy Minister to Grant Leave - *Public Service Act*

The CEO recommends that the *Public Service Act* be amended so that the authority to grant leave to an employee who wishes to seek nomination to be a candidate resides with the deputy minister accountable for the administration of that *Act* rather than with the Minister. The Standing Committee agrees.

Housekeeping Amendments

On pages 42 to 45 of his report, the CEO proposes nine housekeeping amendments to the *Act*. The Standing Committee agrees with all of the proposed amendments, with the exception of recommendation 21 on the 25 metre voting rule.

The CEO recommends that the 25 metre restriction on campaigning outside of advance polling stations and election day polling stations be extended to all voting opportunities. While the Committee understands the concern about the potential for campaigning activities near other voting opportunities, Members are concerned that the proposed amendment would be difficult to enforce and would result in many inadvertent breaches of the *Act*. For example, a person with a candidate sign in the window of their vehicle could be committing an offence if they parked on the street outside the office of the returning officer. These offices are frequently in community buildings that house many other agencies and businesses. To expect anyone with a campaign sign in their vehicle to avoid parking in front of such buildings for an entire election period seems unduly onerous. The Committee therefore disagrees with the CEO's recommendation.

RECOMMENDATIONS

Recommendation 1

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer make voters lists available to candidates in a more timely manner, and in a standard electronic format which can be manipulated.

Recommendation 2

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer undertake research on voter identification requirements, and report back to the Committee with options for amending the current requirements to make them more appropriate for NWT communities.

Recommendation 3

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer monitor developments on the use of social media during election campaigns in other jurisdictions, and consider developing guidelines to assist candidates and their teams before the next general election.

Recommendation 4

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer develop a standard, based on accounting principles that reflect depreciated value, for calculating the value of campaign expenses for signs that are reused from previous elections.

Recommendation 5

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer ensure that for the next general election there is improved signage to clearly identify the location of polling stations.

Recommendation 6

The Standing Committee on Rules and Procedures recommends that the Government review practices in other jurisdictions concerning government advertising during election campaigns, and develop appropriate guidelines for election year advertising by the end of 2014.

Recommendation 7

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer undertake research on the relationship between voter turnout and the day of the week on which elections take place, and report back to the Committee with the results of that research.

Recommendation 8

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended to enable the Chief Electoral Officer to communicate, during an election campaign, the contents of the list of electors to the public using the best available means.

Recommendation 9

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended to enable returning officers to strike names from the preliminary list of electors in cases where the returning officer is certain a person is no longer resident in the electoral district; and to require the returning officer to post the names of persons struck from the list and to update it daily during the revision period.

Recommendation 10

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer identify options for a clearer definition for the term “broadcasting” and report back to the Committee.

Recommendation 11

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended to change the period for mail-in ballots by enabling an elector to apply to the CEO to vote by special ballot up to two weeks before the issue of the writ for an electoral district continuing until the 10th day before polling day; and to provide that the CEO does not provide special ballots until after the close of the nomination period.

Recommendation 12

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer develop detailed recommendations to replace the provisions for advance polls in communities without returning officers and fewer than 500 residents, with a new special voting opportunity, and report back to the Committee.

Recommendation 13

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer provide the Committee with a review of approaches to campaign finance in other jurisdictions, and that the Committee develop a set of proposed principles to guide the development of new campaign finance provisions and report those back to this Assembly.

Recommendation 14

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended to make threatening a candidate and impersonating an election officer offences.

Recommendation 15

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer proceed to develop restructured *Tariff of Fees Regulations* and provide the draft regulations to the Committee for comment before recommending them to the Commissioner.

Recommendation 16

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended to require the Deputy Minister of Justice, at the request of the Chief Electoral Officer, to provide the names and addresses of inmates who are residents of the Northwest Territories on a date specified and who have or who will have attained the age of 18 years on a date specified.

Recommendation 17

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended to define the term “sponsor” as a person or organization that pays for, provides or incurs the cost of the campaign material bearing their identification.

Recommendation 18

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer develop a standard phrase to be used to identify sponsors on campaign material, and include that information in guidelines for candidates.

Recommendation 19

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended to allow election officers to conduct mobile polls.

Recommendation 20

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended so that a person vouching for an elector without sufficient identification need only reside in the same electoral district, rather than in the same polling division.

Recommendation 21

The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended to add candidate nomination papers to the list of public records that may be inspected during office hours at the Office of the Chief Electoral Officer.

Recommendation 22

The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer provide the Committee with recommendations for additional specific enforcement powers for the Chief Electoral Officer, and substantiation for each of those powers.

Recommendation 23

The Standing Committee on Rules and Procedures recommends that the *Public Service Act* be amended so that the authority to grant leave to an employee who wishes to seek nomination to be a candidate resides with the deputy minister accountable for administration of that Act, rather than with the Minister.

Recommendation 24

The Standing Committee on Rules and Procedures recommends that the “housekeeping” amendments, which are identified by the Chief Electoral Officer on pages 42 to 45 of the Report of the Chief Electoral Officer, with the exception of his recommendation 21, be considered by the legislative drafter during the preparation of the other amendments.

CONCLUSION

The Standing Committee on Rules and Procedures will return with additional recommendations after its review of additional research and recommendations from the Chief Electoral Officer on the following topics:

- Voter identification requirements
- Polling day
- The definition of “broadcasting”
- Options for new special voting opportunities for communities with no resident returning officer and with populations of fewer than 500
- Campaign financing provisions
- Additional enforcement powers.